(1985) 04 AHC CK 0033

In the Allahabad High Court

Case No : S.T.R. No. 54 of 1985

Commissioner of Sales Tax APPELLANT

Vs

Abdul Salam RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 13A

Citation : (1986) 61 STC 356

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision has been preferred by the Commissioner of Sales Tax, U.P., against the judgment dated 29th September, 1984, passed by the Sales Tax Tribunal, U.P., Allahabad Bench, Allahabad, relating to assessment year 1975-76 in respect of an order passed u/s 13-A of the U.P. Sales Tax Act (hereinafter referred to as the Act).

2. It appears that an appeal was filed by the Commissioner of Sales Tax against the judgment dated 13th January, 1982, passed by the first appellate authority before the Tribunal which dismissed the same by the impugned order on the ground that there was non-compliance of Rule 66(5) of the Rules framed under the Act.

3. I have heard the learned standing counsel appearing for the department and the assessee is not represented through any counsel. Rule 66(6) provides that "the memorandum of appeal u/s 10 shall be accompanied with a certified copy of the order appealed against and three true copies each thereof". The original copy of the memorandum and the certified copy of the order aforesaid shall be retained by the Tribunal and one copy each thereof shall be served on the assessing authority and the State Representative, and in case of appeal filed by the Commissioner, a copy shall be served on the opposite party. The purpose of

filing extra copies appears to be speedy disposal of the appeal so that the copies may be served on the opposite parties. Sub-rule (4) of Rule 67 says that if the memorandum of appeal is not in order or is not presented according to the prescribed procedure, it shall be rejected. From a perusal of the order passed by the Tribunal it does not appear that what was the defect in the appeal presented by the department, whether it was not accompanied by true copies of memorandum of appeal or it was not accompanied by true copies of the order appealed against. Apart from the aforesaid fact I am also of the opinion that the requirement of Rule 66(5) is not mandatory but directory and even if before the appeal is decided the compliance of the aforesaid Rule 66(6) is done by the appellant, the appeal should not be dismissed on that ground. Non-compliance of Rule 67(2) has been held to be directory and not mandatory and if the said defect can be cured before the appeal is heard by the Tribunal, the requirement of Rule 66(6) can also be fulfilled before the appeal is heard and non-compliance of Rule 66(6) is not so fatal which may result in the dismissal of the appeal itself.

4. In the instant case an application was made by the State Representative that the mistake was inadvertent. In view of the aforesaid fact the Tribunal was not justified in rejecting the appeal on that ground.

5. In the result the revision succeeds and is allowed. The order of the Tribunal is quashed and the case is remanded back to the Tribunal to decide the appeal afresh in the light of the observations made above. Since the assessee is not represented through any counsel, there will be no order as to costs.

6. Let a copy of this order be sent to the Tribunal concerned as required u/s 11(8) of the Act.